

REQUEST FOR COUNCIL ACTION

MEETING
DATE: 11/3/03

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AGENDA SECTION: PUBLIC HEARINGS	ORIGINATING DEPT: PLANNING DEPARTMENT	ITEM NO. E-8
ITEM DESCRIPTION: Type III, Phase I (#03-03) Appeal of the Type III, Phase I (#03-14) Variance Denial		PREPARED BY: Randy Klement Planner
<p>October 27, 2003 <i>NOTE: A number of letters from area residents were sent to the Council separately</i></p> <p><u>Rochester Zoning Board of Appeals Recommendation:</u></p> <p>On August 6, 2003, the Rochester Zoning Board of Appeals denied the variance request of Albert Czaja and Herschel Carpenter Czaja, for the property located at 525 SW 6th Street. The property is in the R-1 (Mixed Single Family Residential) zoning district. The applicant had requested a variance to allow for the placement of a free standing wall that exceeded the maximum allowed height, encroach into the minimum setback from an alley right-of-way and encroach into a traffic visibility zone. The Rochester Zoning Board of Appeals denied the variance request.</p> <p>At the August 6, 2003, Rochester Zoning Board of Appeals meeting, discussion ensued regarding the wall reconstruction along the alley and its impact to the minimum distance from an alley and encroachment into the traffic visibility zone. Comments were made that the applicant increased the height of the wall along the alley but did not change the location of the wall. Also, the wall already was located in the traffic visibility zone and the wall reconstruction completed did not expand on the encroachment into that zone.</p> <p>A wall is considered a structure, which is defined by the City of Rochester Zoning Ordinance and Land Development Manual as: "A combination of materials to form construction for use, occupancy or ornamentation, whether installed on, above or below the surface of land or water". The wall that was in place prior to the reconstruction was considered a nonconforming structure which is defined by the City of Rochester Zoning Ordinance as: "A structure which does not comply with the height, setback, density or floor area ratio requirements of the district which it is located". The wall that was in place prior to reconstruction did not meet the setback from an alley right of way and the required setback from the traffic visibility zone. Section 65.410 – Enlargement or Alteration of the City of Rochester Zoning Ordinance states that a nonconforming structure shall not be enlarged or altered in any way which increases its nonconformity. The only exception to this provision are structures located in the floodplain. The zoning ordinance does allow for maintenance and minor repair of a nonconforming structure.</p> <p>It is staff's opinion that the reconstruction and expansion of the wall is an enlargement of a nonconforming structure and is an expansion into the traffic visibility zone, which further reduces the sight line of vehicle and pedestrian traffic along 6th Street SW.</p> <p><u>Council Action Requested:</u></p> <p>Approve or deny the variance appeal by the applicant based on the original staff report and attachments submitted to the Rochester Zoning Board of Appeals at their August 6, 2003 meeting.</p> <p><u>Attachments:</u></p> <ol style="list-style-type: none">1. Copy of Minutes of the August 6, 2003, Rochester Zoning Board of Appeals meeting.2. Copy of Staff Report and all attachments submitted to the Rochester Zoning Board of Appeals, dated July 29, 2003. <p><u>Distribution:</u></p> <ol style="list-style-type: none">1. City Administrator2. City Attorney3. Planning Department File4. Applicant: This item will be considered by the Council sometime after 7:00 p.m. on Monday, November 3, 2003, in the Council/Board Chambers at the Government Center, 151 SE 4th Street.		
COUNCIL ACTION: Motion by: _____ Second by: _____ to: _____		

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Site
Location
MAP



St. Mary's
Hospital

SW

10TH AVE SW

SW

2ND

3RD

4TH

SW

5TH

S

6TH

Location
525 9 Ave SW

SW

AVE

AVE

8TH

7TH

9TH

8TH

10TH

12TH AVE

8TH ST

10TH

R.

STEELE
JUN 24 2003
HOCHSTETTER DISTRICT
PLANNING DEPARTMENT



Dunlap & Seeger, P.A.

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Ronald L. Seeger
Milton A. Rosenblad
Paul A. Finseth
Daniel E. Berndt
John B. Arnold
Peter C. Sandberg
Tina L. Mohr
William J. Ryan
Paul W. Bucher
Douglas A. Boese
Thomas W. Jacobson
Mary H. Dunlap
William P. Volkmar
Mark E. Fosse
Ken D. Schueler
Gregory J. Griffiths
Michael S. Dietz
Robert G. Benner
Sharon C. Zehe
Kari Stonelake-Hopkins
Christina K. Stevens
Phong M. Luong
Amy B. Michael

of counsel
A.M. "Sandy" Keith

September 12, 2003

Mr. Randy Klement
Rochester-Olmsted
Planning Department
2122 Campus Drive SE, Suite 100
Rochester, MN 55904-4744

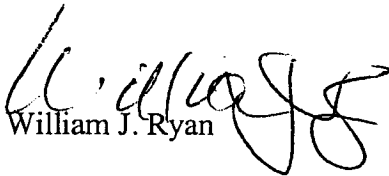
Re: Czaja Variance Appeal Hearing
Our File No. 03-2260

Dear Mr. Klement:

When I filed the appeal from the denial of the Czaja variance, I requested that the hearing be scheduled for October 6, which it was. I overlooked the fact that I would be on vacation that day. I will also be unavailable on October 20. Consequently, I would like to request that the hearing on this appeal be rescheduled to November 3, which I believe is the next meeting.

Thank you for your cooperation. Please give me a call if this will present a problem.

Sincerely,


William J. Ryan

WJR:kas
cc: Albert Czaja and Herschel Carpenter Czaja

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Czajas' Reasons for Variance Application

Our home is located at the northwest corner of Ninth Avenue and Sixth Street SW. It was built around 1917. The yard is relatively flat, but the surrounding terrain slopes from the back (west) of our lot to the front (east) of our lot. This results in the back of our lot being substantially below the grade of the alley and the front being substantially above the grade of the street. The differences in grade have been accommodated by a limestone retaining wall that runs across the back, side (south) and front of the lot. We have owned the home since 1977, and the wall was in place at that time. We believe that the wall dates back to the time that the house was constructed. A hedge along the portion of the wall extending along the side of our lot provided privacy screening from street and sidewalk traffic along Sixth Street SW.

Recently, the condition of the existing wall deteriorated to the point that there was a danger that it would collapse, resulting in loss of support and/or damage to the abutting alley and streets. We elected to replace the wall with a new rock wall. The new rock wall is apparently the basis for a Notice of Violation of Sections 63.126(3), (4) and (6) of the zoning code. We are seeking variances from those provisions of the zoning code to the extent necessary to permit the continued location of the new wall.

The new wall is located in the exact location of the old wall. In fact, the lower portions of the old wall were left in place and the new wall was built on top of them. The height of the new wall exceeds the height of the old wall in some areas. These are generally along the back (west) of the lot adjacent to the alley and along the west portion of the side (south) of the lot. Along the back of the lot, the wall exceeds the height of the old wall by about 2 feet and extends to approximately 5 1/2 feet above the alley. Along the west portion of the side of the lot adjacent to Sixth Street SW, it was necessary to "step down" the new wall due to the downward slope of the adjacent street and sidewalk. This results in the wall being over 6 feet above the sidewalk at some locations. It must be noted, however, that a hedge planted within the old wall on the side of the lot exceeded the height of the new wall in that location. The hedge provided privacy screening from Sixth Street SW and the sidewalk. It was necessary to destroy the hedge in order to repair and replace the wall. The new wall now provides privacy screening in place of the hedge. Lastly, the east portion of the new wall along the side of the lot and the portion of the new wall along the front of the lot are at the same height as the old wall in those areas.

We are requesting variances from the zoning code sections cited in the Notice of Violation for the following reasons:

Section 63.126(3)

The new wall is located at the same position relative to the sidewalk and alley as the old wall. The old wall predated the zoning ordinance. Its replacement was necessary to provide lateral support to the alley and sidewalk due to the deteriorated condition of the old wall.

AUG 29 2013

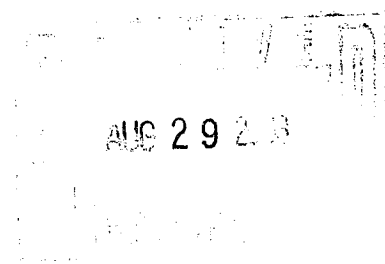
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Section 63.126(4)

The new wall does exceed 6 feet in height in some places, but that was necessary due to the severe slope of the adjacent surface from front to back and the need to "step down" the wall as it extends from higher ground to lower ground. It was also necessary to replace the privacy screening that was previously afforded by the hedge that had to be removed. Replanting the hedge was not an option due to the length of time that the hedge would have to grow to reach an effective height. We believe that the variance from the height limitation is warranted due to the following: (a) the irregularity of the terrain and the differences in grade between the lot and the adjacent streets and alleys are particular to this property and generally do not apply to other properties within the neighborhood; (b) the variance is necessary to permit the reasonable use of our property (particularly with respect to privacy screening, otherwise the headlights of traffic along Sixth Street SW would shine directly into our family room); (c) the variance will not be materially detrimental to the public welfare or materially injurious to other properties in the area, since the new wall basically replaces the old wall and prior hedge without exceeding the height of the prior hedge; and (d) the requested variance is the minimum necessary to provide for the reasonable use of our property.

Section 63.126(6)

We believe that a variance to this section is warranted due to the facts that: (a) the new wall basically replaces the functions of the old wall and the hedge; (b) the old wall and hedge predated the zoning code; and (3) it was necessary to replace the old wall (and thus remove the hedge) in order to provide continued lateral support to the alley and sidewalk. The impact of the new wall on the traffic visibility zone was not altered or increased by virtue of the replacement of the old wall and hedge with the new wall.



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City of Rochester
Zoning Board of Appeals
2122 Campus Drive SE, Suite 100
Rochester, MN 55904

Minutes of the regularly scheduled meeting of the Rochester Zoning Board of Appeals held on Wednesday, August 6, 2003, at 7:00 p.m. in the Council/Board Chambers located at the Government Center, 151 4th Street SE Rochester, MN.

Members Present: Mr. Paul Ohly; Ms. Carol McCaleb; Mr. Jeffrey Bagniefski; Mr. Marvin Langanki; and Mr. John McGuine

Members Absent: Mr. Jeff Mundt; and Mr. Michael Busch

Staff Present: Mr. Randy Klement; Planner and Ms. Mary Sheehan; Secretary

Other City Staff Present: Ms. Pat Alfredson; Assistant City Attorney

ADMINISTRATIVE BUSINESS:

Mr. Ohly, Chair, called the meeting to order at 7:00 p.m.

Mr. Langanki made a motion to approve the minutes of July 2, 2003, seconded by Mr. McGuine. The motion carried unanimously.

Mr. Langanki made a motion to move Variance Request # 03-14 to the last hearing on the agenda. The motion failed for lack of a second. Mr. Ohly, Chair, stated that the order of the agenda would proceed as submitted.

PUBLIC HEARINGS:

Type III, Phase I, Variance Request #03-14 by Albert Czaja and Herschel Carpenter Czaja to allow for the placement of a free standing wall that will exceed the maximum allowed height, encroach into the minimum setback from an alley right-of-way and encroach into a traffic visibility zone. The property is located at 525 SW 9th Avenue and is in the R-1 (Mixed Single Family) Zoning District.

Mr. Klement presented the staff report dated July 29, 2003. The staff report is on file at the Rochester-Olmsted Planning Department.

Mr. Ohly opened the public hearing.

Mr. Bill Ryan, of Dunlap & Seeger, on behalf of the applicant, addressed the Board. He presented photos of the property to illustrate the topography of the site. He stated that 6th Street SW was very steep. He stated that the topography of the site created unusual and extraordinary circumstances that supported the variance.

Mr. Bagniefski entered the meeting at 7:07 pm.

Mr. Ryan stated that the applicant was asking for a variance to three sections of the code. He stated that Section 63.126(3) and Section 63.126(6) pertain to horizontal issues regarding the placement of the wall. He stated that Section 63.126(4) pertained to the height of the wall; that it should not to exceed 6 ft. He stated that the only difference between the old wall and the new wall was the height.

Mr. Ryan stated that the applicant should get the benefit of the grandfathering provision for the horizontal issues because the new wall was placed in the same location as the old wall. He stated that the property had an extraordinary circumstance due to the differences in elevation between the alley and the yard. The wall needed to remain in the present location to continue to support the wall laterally. He stated that the wall would not be detrimental to public welfare, because in the past 80 years, with the wall in the same location, he was not aware of any public safety issues. He stated that the requested variance was the minimum necessary to provide for the reasonable use of the applicant's property to allow for a basic private backyard.

Mr. Ryan explained the grade of the property in relation to the slope of the street. He explained how the stonewall retained the property. Because the old wall had deteriorated, the applicant hired Mr. Thorp, a masonry contractor, to replace the wall. The property had a 6 ft. privacy hedge that screened the property from traffic, but the hedge was removed to build the new wall. Without a barrier, due to the high crest of 6th street, the lights from the traffic would shine into the house and interfere with the appropriate use of the home. The new stonewall was built the same height as the hedge was. A 6 ft. fence would not be high enough to block the traffic light.

Mr. Ryan stated that the wall had to be designed with steps down so that the wall height would remain level. Consequently, the height of the wall increased in excess of 6 ft. He stated that the wall height reached approximately 8 ft. near the original gate. Because the applicant needed to replace the screening that the hedge provided, the height of the new stonewall was justified.

Mr. McGuine asked what prompted the request for a variance after the wall was built.

Mr. Ryan replied that there was a complaint made which prompted the Planning Department to send out a notice of violation.

Mr. Charles Mullany, of 925 6th St SW, Rochester, addressed the Board. He stated that the neighborhood was placed on the US Registry of Historical Sites. He stated that the stonewall enhanced the neighborhood by keeping with the historical nature of the neighborhood. He had no objection to the wall.

Mr. Dale Goodfriend, of 617 SW 9th Avenue, Rochester, addressed the Board. He stated that the applicant originally had a 2 ft wall with a nice 6 ft tall arborvitae hedge

above it that provided the needed privacy screen. But then the applicant cut down the hedge and replaced it with a 9 ft. high stonewall. He stated that the applicant's argument that they took down the hedge to build the wall, and hence, built the wall 9 ft high to replace the hedge, was not reason enough to grant a variance. He stated that it was not accurate to claim that the wall needed to step down the slope of the hill, hence forcing the height to reach 9 ft. He stated that there were plenty of walls in the City that followed the existing slope of the hill. The original wall did not step down, but followed the slope of the hill.

Mr. Goodfriend stated that it was not "ok" for people to ignore the zoning laws. He stated that the applicant used the excuse that the wall was there before, so it should be allowed to remain. He stated that a 9 ft wall was not there before. There was a 2 ft wall with a hedge. He stated that all the houses in the neighborhood were old, but the wall was new, and it was way over the limit of the law. He stated that the location of the wall was not a concern of his.

Ms. Mary Trousdale of 523 9th Avenue SW, Rochester, MN addressed the Board. She stated that, every time she walked by the wall, she was thankful that the applicant had renovated the wall so beautifully. She stated that whether the wall was a little bit too high did not matter because the wall was a piece of art. She stated that no one that lived on the alley was present at the hearing to object to the new wall. She suggested that maybe a mirror be placed in the alley for traffic visibility.

Mr. Tom Mangan, of 2115 Baily Hills Drive SW, Rochester addressed the Board. He stated that he thought the wall was a beautiful piece of artwork. He believed that the wall enhanced the applicant's property.

Ms. Lora Beaupre of 1104 SW 6th Street, Rochester, MN addressed the Board. She stated that she agreed that it was a lovely wall, but that the wall broke the law. She stated that, if the Board would make an exception to the law in this case, then the Board would need to make exceptions for everyone else that may choose to not follow the law. She stated that the contractor, who was a professional stone mason, had to have known he was going over the zoning law limit of 6 ft in height.

Ms. Herschel Czaja of 525 SW 9th Avenue, Rochester, addressed the Board. She explained that in order to repair the wall, they needed to take down the hedge and the gazebo in the back yard. She stated that they did not feel that they were actually building a 9 ft wall because they were only building a 6 ft wall on top of the existing 2 ft retaining wall. She stated that the old hedge was taller than the new stonewall was. She stated that, in regards to the set back in the alley; they could not move the retaining wall from the original location.

Mr. Bagniefski asked if Mr. Thorp informed the applicant of the 6 ft height limit.

Ms. Czaja replied that Mr. Thorp had asked her to check on the zoning ordinances, but she asked Mr. Thorp to inquire about the ordinances for her.

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Ms. McCaleb asked why the contractor did not check with the Planning Department regarding the zoning code.

Ms. Czaja replied that she believed that the contractor was not aware that he would need to obtain a building permit to construct the wall. She stated that she knew that the fence should not go over 6 ft, so she had Mr. Thorp build the new stonewall on top of the old retaining wall. She stated that they couldn't keep the new wall under 6 ft. as it stepped down the hill, but the wall height in the alley was 6 ft. She stated that it was difficult dealing with the discrepancy in the grade. She stated that the wall was visually good for the neighborhood because it hid the utilities in the back yard.

Mr. Goodfriend readdressed the Board. He referenced the statement that Mr. Ryan made that walls need to step down the slope of a hill. He stated that Mr. Ryan was not a wall expert. He stated that he had never heard of the need to step down a wall, as opposed to following the contour of the ground.

Mr. Ohly asked what bothered Mr. Goodfriend about the wall.

Mr. Goodfriend replied that the stonewall was enormous and intimidating and not pleasant to walk by. It is most regretful that the folks involved chose not to check on the zoning. The wall was in violation of the law. He stated that houses have been taken down in Rochester that have been placed in the wrong place, and that the wall should be lowered down to 6 ft.

Mr. Ryan readdressed the Board. He stated that the highest part of the wall was the 10 ft. gateway that had been in place for over 50 years. He stated that there should be no difference made between the 9 ft wall and the 10 ft gate. If the gate was not a problem, then the fence shouldn't be a problem either. He stated that the gateway was grandfathered in and was the highest part of the fence. He made note of the fact that the entire wall was not 9 ft. high, only parts of it before it stepped down.

Mr. Ohly closed the public hearing.

Mr. McGuine stated that he agreed that the wall was very attractive, but that the wall was constructed prior to approval from the Zoning Department. The applicant put the "cart before the horse". He stated that professionals in the construction business need to check the zoning and building codes before beginning work. He stated that there were no exceptions in the Ordinance to allow for a wall to exceed 6 ft, except if there were safety reasons or if the top of wall met the adjacent grade; neither of which applied to the applicant's property.

Mr. Klement stated that when a person replaces a wall, they are building a new structure, and consequently need to comply with the current zoning ordinances.

Mr. Bagniefski asked if traffic visibility was the main problem with the wall.

Mr. Klement replied that the traffic visibility was an issue, but also the height. He stated that there appeared to be no criteria, based on the ordinance, for granting the variance. He stated that the wall was a retaining wall and that the applicant should have gotten a building permit.

Mr. Bagniefski asked if the exceptional circumstance could be the historical character of the house.

Mr. Klement presented a picture of the applicant's house, dated 1920, that showed the original retaining wall. He replied that, if the applicant wanted to retain the historical character of the house, the applicant should have constructed the wall only 2 ft. high to make it look like the original.

Mr. Langanki stated that the wall should have been built to match the old wall to make it historical.

Ms. McCaleb asked if the Board could consider the fact that the new wall was built on top of the old wall.

Mr. Klement replied that the height of the freestanding wall was measured from the ground on the outside of the wall, and would have to include the old wall.

Mr. Bagniefski stated that it was a freestanding wall from the outside, and a partial retaining wall from the inside.

Mr. Klement stated that even if it were considered a partial wall, the wall couldn't exceed 6 ft. above the grade.

Ms. McCaleb stated that she drove through the alley and that one cannot see anything until they drive across the sidewalk.

Mr. McGuine made a motion to deny Variance Request #03-14 by Albert Czaja and Hershel Carpenter Czaja based on staff findings. Mr. Langanki seconded the motion. The motion carried 4-1 with Mr. Bagniefski voting nay.

FINDINGS:

EXCEPTIONAL CIRCUMSTANCES: There are no exceptional circumstances or conditions that apply to the applicant's property that may not apply generally to other properties in the same zoning district. Any lateral support of a sidewalk or alley can be done at grade level of the sidewalk and alley. Concerns of support for those right of way areas should have been directed to the Rochester Public Works Department for their input. Also, there is no safety or security need, or adjacent building grades, as required by the zoning ordinance, that would allow

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for a wall to exceed six (6) feet in height.

REASONABLE USE: The granting of this variance request is not necessary to allow for the reasonable use of the applicant's property. A wall height of 6 feet provides sufficient privacy and screening from the adjacent sidewalk and roadways.

ABSENCE OF DETRIMENT: The granting of the variance request would be materially detrimental to the public welfare because of the wall location in the traffic visibility zone. The alley right of way provides access to a number of property owners. Vehicles exiting the alley onto 6th Street SW will not have a clear sight line of vehicle and sidewalk traffic coming from the east.

Mr. McGuine made a motion to reopen the public hearing. Mr. Bagniefski seconded the motion. The motion carried 4-1 with Mr. Ohly voting nay.

Mr. Ohly opened the public hearing.

Mr. Ryan stated that the newly constructed wall was the same distance from the alley as it had always been. He stated that the prior existence of the wall was the extraordinary circumstance that should justify the granting of the variance. The old wall predated the zoning ordinance, was nonconforming, was in the traffic visibility zone, and because the new wall was built in the same location, it should be grandfathered in.

Mr. McGuine stated that the applicant built the wall in the same location, but made it 6 ft high instead of the original 2 ft.

Mr. Langanki asked if the wall along the alley had new footings put in.

Mr. Klement replied yes. That section of the wall was totally reconstructed.

Mr. Ryan presented photos to show that there were no new footings.

Ms. Czaja stated that there were no new footings put in. She stated that they installed a curb to redirect water away from the wall in the alley.

Discussion ensued regarding how the curb and buttresses of the wall were erected.

Mr. Ryan requested that the Board vote separately on each issue: location, height and traffic visibility. He stated that the location and the traffic visibility issues were non-conforming to begin with, and that only the height had changed.

Mr. Ohly closed the public hearing.

Mr. Langanki stated that the motion made should be allowed to stand. He stated that the Board should not make another motion because the Board had never voted separately on different issues regarding a variance request. He stated that the Board makes one vote for every variance with possible modifications.

No further motion was made.

Mr. Ohly stated that the applicant had the right to appeal the Board's decision to the City Council.

Type III, Phase I, Variance Request #03-15, by the City of Rochester, on behalf of AmericInn Hotel & Suites, to allow for an addition that will encroach into the minimum required front yard. The property address is 5708 Hwy. 52 North and is in the B-1 (General Commercial) Zoning.

Mr. Klement presented the staff report dated July 30, 2003. The staff report is on file at the Rochester-Olmsted Planning Department.

Mr. Ohly opened the public hearing.

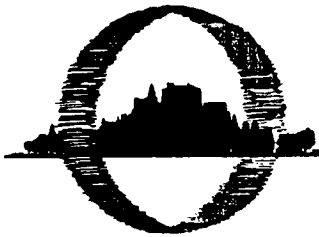
Mr. Mike Nigbur of the Rochester Public Works Department addressed the Board. He explained that, about 15 years ago, the City of Rochester acquired the right-of-way called Bandel Road from the State of Minnesota. The City then vacated portions of the Bandel Road right-of-way. Due to the development in the area, the City was going through the process of a future expansion project to handle increased traffic in the area. Originally, the City acquired 15 ft of property from the AmericInn Hotel site. The hotel was built on the site with the premise that they had the land to use for their purposes. Throughout the acquisition process, the City had a settlement agreement with AmericInn Hotel and committed to them that the City would go through a variance process to allow them to build in that area in the next several years. The City Council had approved the settlement agreement with the condition that the City go through the variance process to formalize the agreement so that AmericInn would be authorized to develop the property in the future. He stated that the City would move a sign that was presently in the traffic visibility zone.

Mr. Ohly closed the public hearing.

Mr. McGuire made a motion to approve Variance Request #03-15 by the City of Rochester based on staff findings. The motion was seconded by Mr. Bagniefski. The motion carried 5-0.

FINDINGS:

EXCEPTIONAL CIRCUMSTANCES: There does appear to be an exceptional circumstance or condition that applies to the applicant's property that may not



ROCHESTER-OLMSTED PLANNING DEPARTMENT

2122 Campus Drive SE, Suite 100 • Rochester, MN 55904-4744

COUNTY OF
Olmsted

www.olmstedcounty.com/planning



TO: Rochester Zoning Board of Appeals

FROM: Randy Klement, Planner *R.K.*

DATE: July 29, 2003

RE: Variance (Type III, Phase I), #03-14

Planning Department Review:

APPLICANT: Albert Czaja and Herschel Carpenter Czaja
525 SW 9th Avenue
Rochester, MN 55902

LOCATION OF PROPERTY: Lot 1 and the South ½ of Lot 2, Red Oaks
Subdivision

ZONING: R-1 (Mixed Single Family Residential
Zoning District)

REFERRAL AGENCY COMMENTS: Attached

ANALYSIS:

The applicant has reconstructed the stone wall on the east, south and west sides on the property. The work completed included increasing the height of the wall and removing the wall along the alley on the west side of the property and replacing with a new stone wall with footings.

According to Section 63.126(3) – Fences, Walls and Hedges of the City of Rochester Zoning Ordinance and Land Development Manual: No fence, hedge or wall shall be placed closer than 18 inches to any public sidewalk or within 5 feet of an alley right of way.

The previous wall along the alley on the west side of the property was considered nonconforming in that it did not meet the 5 foot setback from the platted alley right of way. Once the applicant removed the previous wall to build the new wall, the standards of the zoning ordinance applies to the new wall and requires a 5 foot setback from the alley right of way. The new wall abuts the alley right of way on the south side of the property.



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According to Section 63.126(4) – Fences, Walls and Hedges of the City of Rochester Zoning Ordinance and Land Development Manual: Fences and walls shall not exceed six (6) feet in height above the elevation of the surface of the ground at any point, except 1) that in instances where public safety or security necessitate, the zoning administrator may authorize fences and walls to have a maximum height not to exceed 10 feet above the elevation of the surface of the ground at any point, or 2) where the grade of the buildings on adjacent lots is greater than that of buildings on the applicant's lot, the fence may exceed the height limitations, but in no case shall exceed the grade of the adjacent building by more than five (5) feet. One example of public safety or security allowing for a fence higher than six feet would be to enclose equipment, such as an electrical transformer, which would prevent access and provide safety.

The applicant increased the height of the wall along the south side of the property. There are areas of the new wall on the south side of the property that has a height which exceeds 9 feet. Also, any free standing wall over 6 feet in height requires a building permit. No building permit was obtained for the modification of the wall.

Also, according to Section 63.126(6) – Fences, Walls and Hedges of the City of Rochester Zoning Ordinance and Land Development Manual: Fences, wall and hedges located within the traffic visibility zone are subject to the provisions of Section 63.500. Determining the traffic visibility zone for an intersecting street and alley is regulated under 63.504 of the zoning ordinance (copy of Section 63.504 is attached). The Long Range Thoroughfare Plan, adopted by the Rochester-Olmsted Council of Governments in 1997, classifies 6th Street SW as a collector roadway. This roadway classification was used when determining the traffic visibility zone at the intersection of 6th Street SW and the platted alley right of way.

The wall along the alley on the west side of the property encroaches approximately 30 feet into the Traffic Visibility Zone and the west end of the wall along the south side of the property encroaches approximately 47 feet into the Traffic Visibility Zone, as identified on the attached map.

The applicant requests a variance to Section 63.126(3), Section 63.126(4) and Section 63.126(6) of the City of Rochester Zoning Ordinance and Land Development Manual.

The Planning staff suggested findings are:

EXCEPTIONAL CIRCUMSTANCES: There are no exceptional circumstances or conditions that apply to the applicant's property that may not apply generally to other properties in the same zoning district. Any lateral support of a sidewalk or alley can be done at grade level of the sidewalk and alley. Concerns of support for those right of way

areas should have been directed to the Rochester Public Works Department for their input. Also, there is no safety or security need, or adjacent building grades, as required by the zoning ordinance, that would allow for a wall to exceed six (6) feet in height.

REASONABLE USE: The granting of this variance request is not necessary to allow for the reasonable use of the applicant's property. A wall height of 6 feet provides sufficient privacy and screening from the adjacent sidewalk and roadways.

ABSENCE OF DETRIMENT: The granting of the variance request would be materially detrimental to the public welfare because of the wall location in the traffic visibility zone. The alley right of way provides access to a number of property owners. Vehicles exiting the alley onto 6th Street SW will not have a clear sight line of vehicle and sidewalk traffic coming from the east.

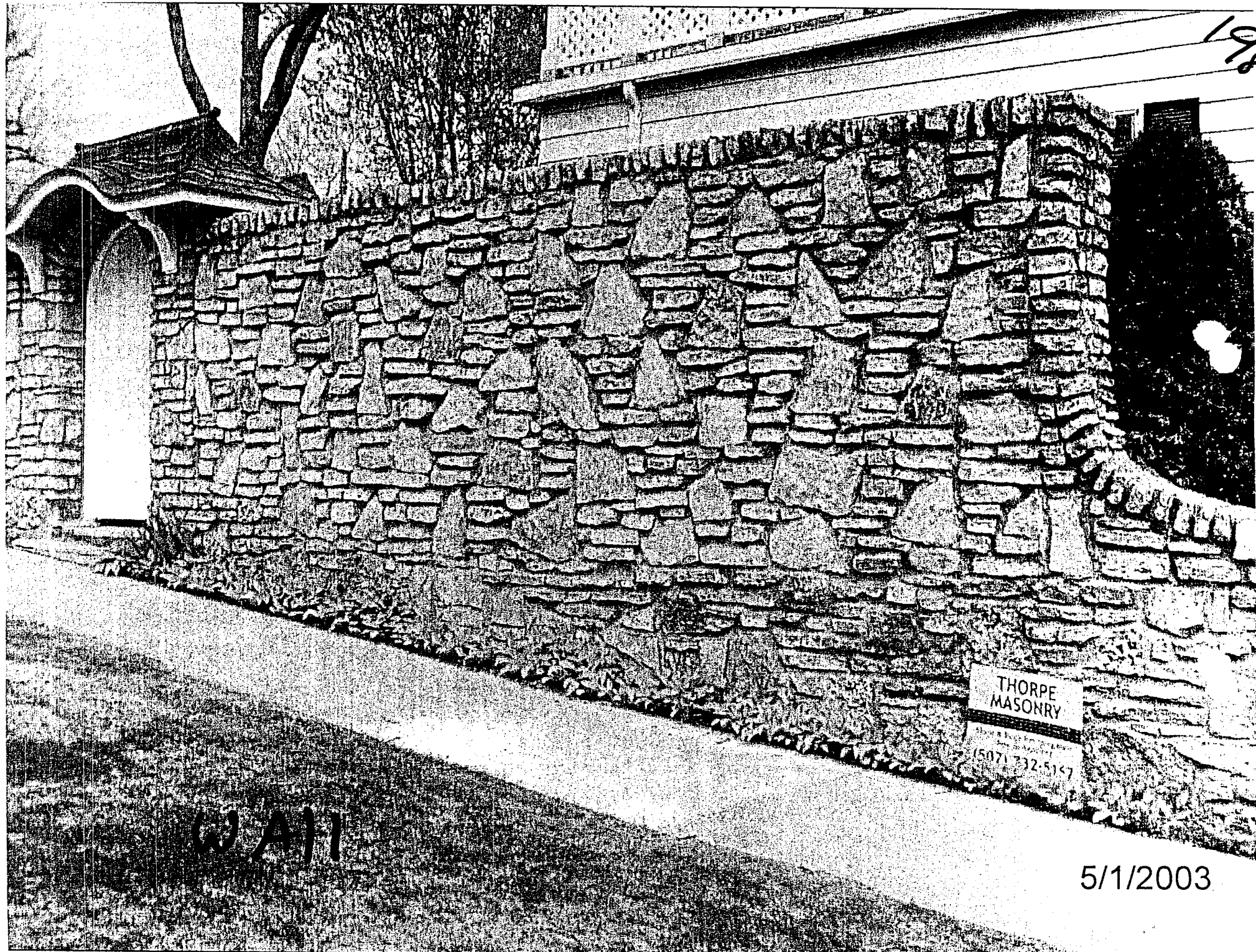
MINIMUM VARIANCE: The minimum variances that would be necessary to alleviate the alleged hardship would be a variance to Section 63.126(3), Section 63.126(4) and Section 63.126(6) of the City of Rochester Zoning Ordinance and Land Development Manual. This finding would not pertain in the case of denial.

Attachments:

1. Copy of Application
2. Copy of Wall Photos
3. Copy of Section 63.504 of the Zoning Ordinance
4. Copy of Traffic Visibility Map
5. Copy of Site Location Map
6. Copy of Referral Agency Comments
7. Copy of Findings for a Variance

Reviewed by:

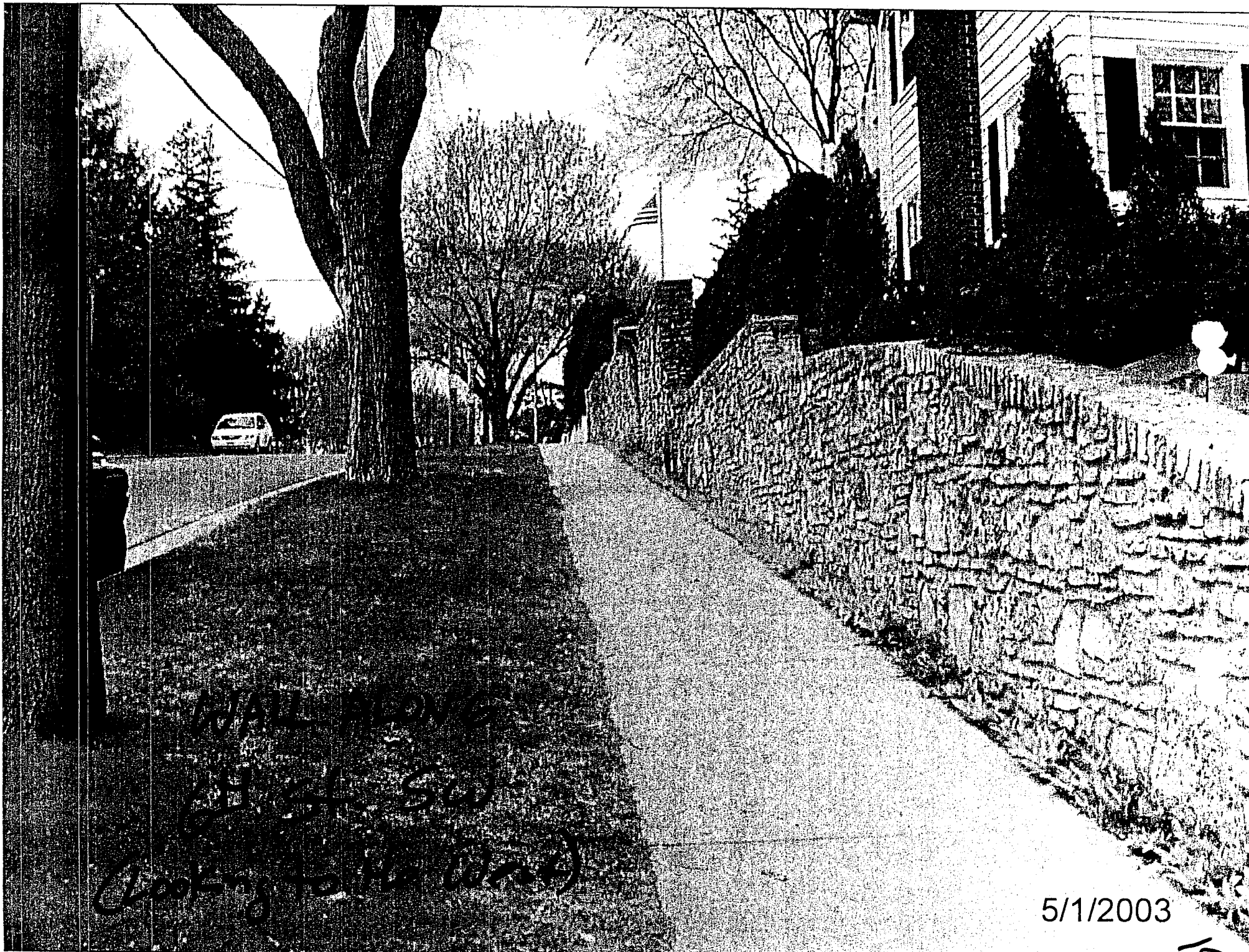




192

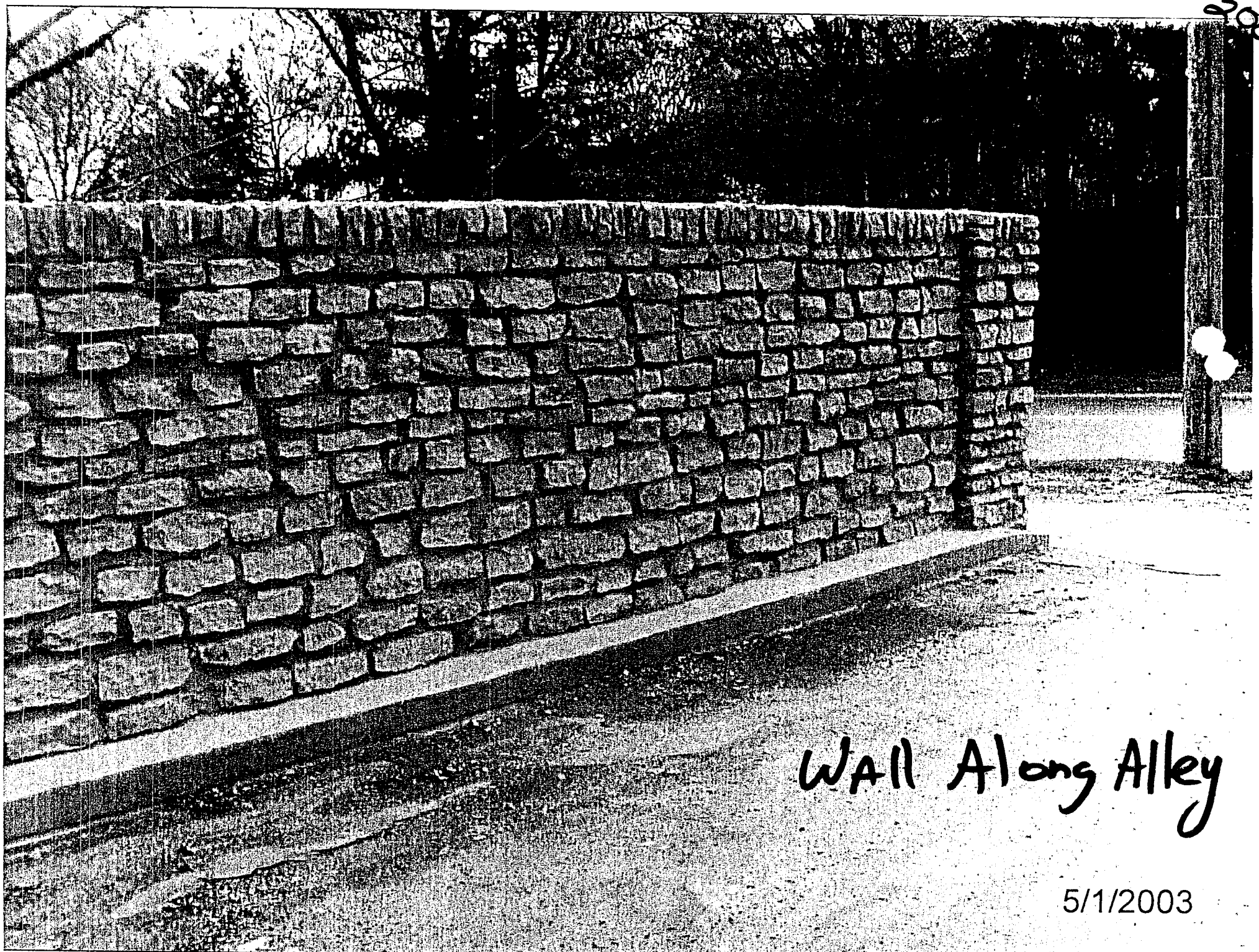
WALL

5/1/2003



5/1/2003

109



Wall Along Alley

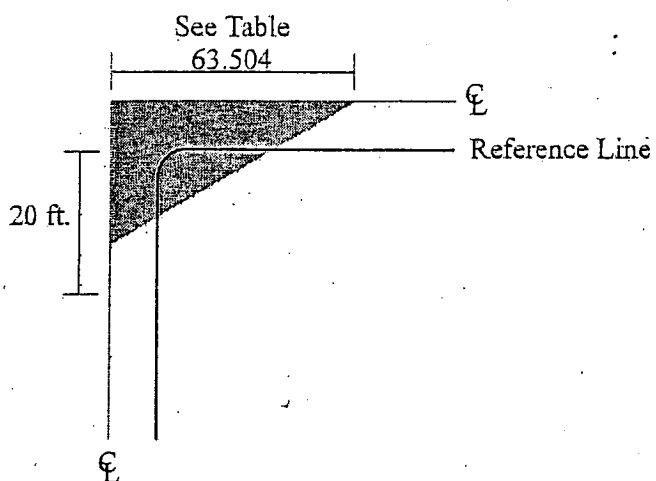
5/1/2003

201

63.504 Traffic Visibility Zones for Intersecting Streets:

A Traffic Visibility Zone shall be maintained at the intersection of two streets or a street and an alley within the triangular area described by the line connecting the following points: (see Figure 63.504)

Figure 63.504: Traffic Visibility Zone (2-Way Stop)



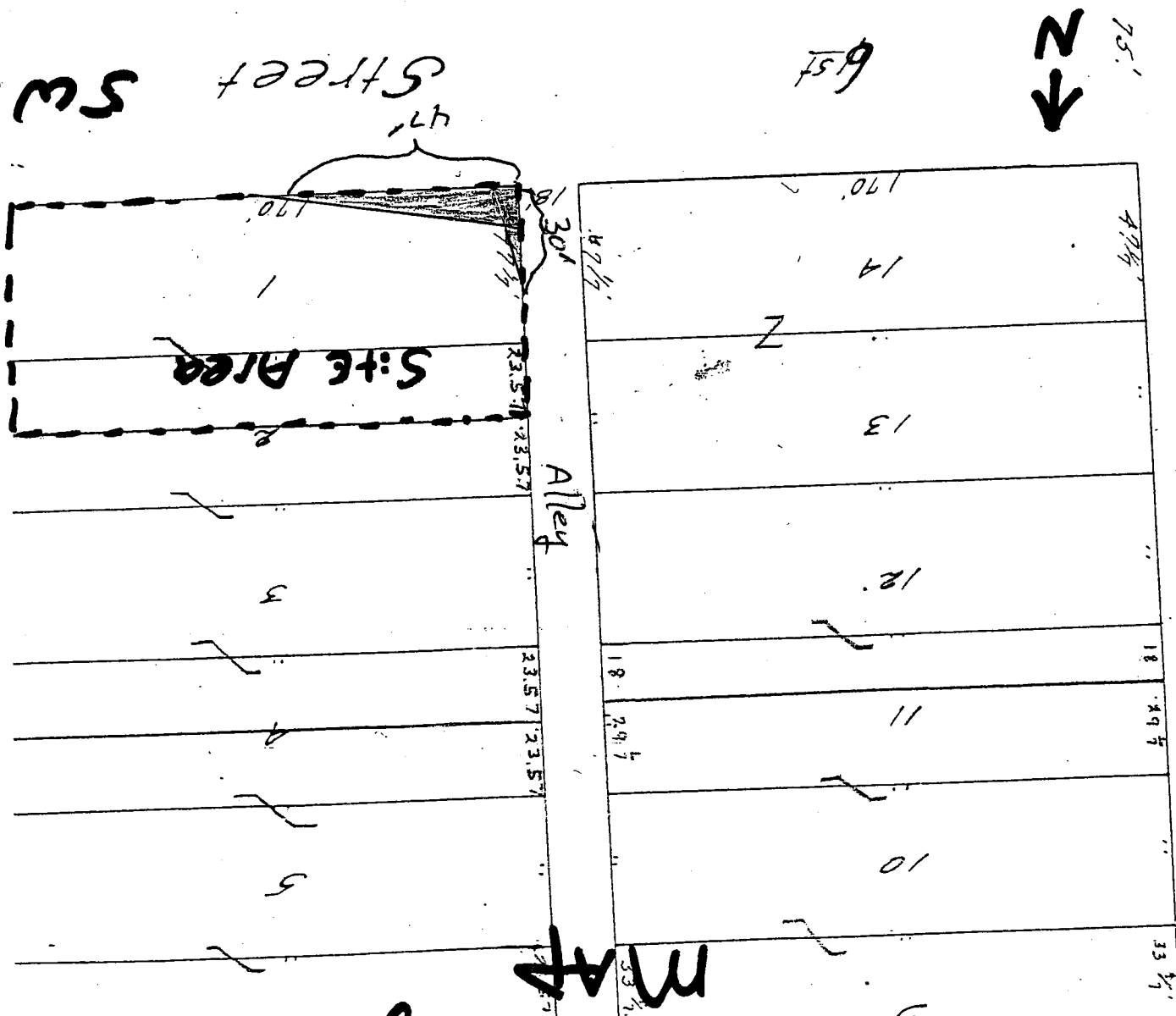
- 1) the point created by the intersection of the centerlines of the two streets or street and alley;
- 2) the point along the centerline of the lower order street or alley which is twenty (20) feet from the intersection of the centerline of the lower order street or alley and the reference line of the higher order street;
- 3) a point along the centerline of the higher order street which is located the distance from point 1 indicated in the table below:

Table 63.504

Higher Order Street Type	Distance (feet)
Expressways	400 feet
Arterials	300 feet
Collectors	200 feet
All Local and private streets with more than 1,000 adt*	150 feet
All Local Streets and Alleys with 1,000 or fewer adt*	100 feet
*adt - average daily trips	

eat

Handwritten signature: *W. W.*



*Shaded Area is Traffic U.S. 6:1.4 zone

State of Minnesota ss

County of Wilmsted

County of Ulmsted
 1. ~~John~~ City clerk in and for the City of Rochester
 RED OAKS has duly approved by the Common Council
 of April AD 1914

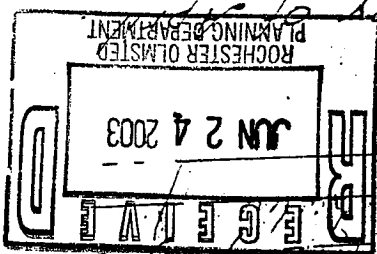
of April A.D. 1914

Taxes paid and transfer entered this 7th day of February 1944

State of Minnesota

County of Ulmsted
No. _____ Filed for

No. _____ Filed for record



203-

Klement Randy

From: Kramer, David [dkramer@ci.rochester.mn.us]
Sent: Monday, October 27, 2003 11:33 AM
To: wryan@dunlaplaw.com; Randy Klement (E-mail); John Harford (E-mail)
Cc: Hunziker, John
Subject: Wall at intersection of alley and 6 St SW 900 Block (north side)

It is my understanding the referenced site is the subject of a variance appeal regarding a wall within the traffic visibility zone.

Bill Ryan with Dunlap & Seeger requested that I visit the site regarding the possibility of a sign to warn vehicles of pedestrian traffic, in lieu of removing the wall.

Regarding the safety of pedestrians and bicyclists that may lawfully be using the sidewalk, it is far preferable to remove the unsafe condition (i.e. provide visibility) than to provide a warning sign.

David F. Kramer, P.E.
Interim Traffic Engineer
dkramer@ci.rochester.mn.us
507-281-6194
Department of Public Works
201 4th Street SE, Room 108
Rochester, MN 55904-3740

204



July 2, 2003

Rochester-Olmsted
CONSOLIDATED PLANNING DEPARTMENT
2122 Campus Drive SE
Rochester, MN 55904-7996

REFERENCE: Type III, Phase I, Variance Request #03-14 by Albert and Herschel Carpenter Czaja to allow for the placement of a free standing wall that will exceed the maximum allowed height, encroach into the minimum setback from an alley right-of-way and encroach into a traffic visibility zone located at 525 9th Ave SW.

Dear Ms Garness:

Our review of the referenced Variance Request is complete and we have no objections.

Please contact us at 507-280-1600 if you have questions.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Donn Richardson'. The signature is written in a cursive, flowing style.

Donn Richardson
Water

C: Doug Rovang, RPU
Mike Engle, RPU
Mark Baker, City Public Works
Vance Swisher, Fire Prevention



we pledge. we deliver

205

DATE: July 2, 2003

TO: Jennifer Garness, Planning Dept.
Rochester-Olmsted Planning Dept.

FROM: Michael J. Engle, Supv. of Distribution Design
Rochester Public Utilities
280-1579

SUBJECT: Type III, Phase I, Variance Request #03-14 by Albert Czaja and Herschel Carpenter Czaja to allow for the placement of a free standing wall that will exceed the maximum allowed height, encroach into the minimum setback from an alley right-of-way and encroach into a traffic visibility zone. The property is located at 525 SW 9th Avenue and is in the R-1 (Mixed Single Family) Zoning District.

RPU's Operations Division review of the above-referenced variance request is complete and we have no comments.

Sincerely,

A handwritten signature in black ink, appearing to read 'Michael J. Engle', written in a cursive style.

la

206

Garness Jennifer

From: Debra Persoon [Debbie.Persoon@dot.state.mn.us]
Sent: Thursday, June 26, 2003 8:36 AM
To: garness.jennifer@CO.OLMSTED.MN.US
Cc: Dale Maul; Fred Sandal
Subject: no Significant impacts

These proposals will have no significant impacts on Mn/DOT roadways.

→ Type III, Phase I, Variance Request #03-14 by Albert Czaja and Herschel Carpenter Czaja to allow for the placement of a free standing wall that will exceed the maximum allowed height.

Variance request #03-04 by Mark J. Holte to allow for the construction of an attached garage addition.

Thanks - Debbie

Debbie Persoon-Bement, Plan and Plat Coordinator
Minnesota Department of Transportation
2900 48th Street NW
Rochester, MN 55901-5848
Phone: (507) 281-7777
Fax: 507-285-7355
E-Mail: debbie.persoon@dot.state.mn.us

ROCHESTER

— Minnesota —

TO: Consolidated Planning Department
2122 Campus Drive SE
Rochester, MN 55904

207 /
DEPARTMENT OF PUBLIC
WORKS
201 4th Street SE Room 108
Rochester, MN 55904-3740
507-287-7800
FAX – 507-281-6216

FROM: Mark E. Baker

Date: 07/29/03

The Department of Public Works has reviewed the requested application for a Variance #03-14 by Czaja for a proposed Wall in the traffic visibility zone.

1. Due to the pre-existing wall at this location Public Works would require the Owner to pay for signage in the alley and along the sidewalk the denotes "Blind Access"

208

CZAJA VARIANCE REQUEST

525 9th Avenue SW

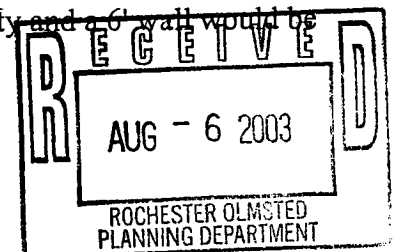
Applicants' Proposed Findings

As to 63.126(3) and (6)

1. Extraordinary circumstances exist due to the elevation differences between the alley/street and yard that require lateral support to be provided where the change in elevation occurs. This is necessarily along the lot line, which is the present and historic location of the wall.
2. The requested variance is necessary to permit the reasonable use of the Applicants' property. To require relocation of the wall would deprive the Applicants of the use of a significant portion of their back yard.
3. The requested variance will not be detrimental to the public welfare. The wall has existed in its present location for many years without causing any public safety problems.
4. The requested variance is the minimum necessary to provide reasonable economic use of the Applicants' property (namely, their backyard).

As to 63.126(4)

1. Extraordinary conditions exist due to the relative elevational differences between the house and the traffic on 6th Street SW. Without a barrier, lights from eastbound traffic on 6th Street SW shine into the house. Traffic at the crest of the hill is more than 6' above the surface at the place where it reaches the Applicants' property and a 6' wall would be insufficient to block that light from shining into the house.



2. The requested variance is necessary to permit the reasonable use of the Applicants' property (namely, the ability to reside in the house without the intrusion of lights from passing traffic).
3. The requested variance is not detrimental to public health. The visibility of approaching traffic was previously impacted by the prior hedge and that did not present any public safety problems.
4. The requested variance is the minimum necessary to provide for the reasonable economic use of the Applicants' property.

210
According to Section 60.417 in the City of Rochester Zoning Ordinance and Land Development Manual, in taking action on a variance request, the Board of Appeals shall make findings supporting the decision based on the following guidelines:

60.410 Findings for Variances: In taking action on a variance request, the approval authority shall make findings supporting the decision based on the following guidelines:

- 1) The approval authority may grant a variance to the provisions of this ordinance if it finds that:
 - a) there are extraordinary conditions or circumstances, such as irregularity, narrowness, or shallowness of the lot or exceptional topographical or physical conditions which are peculiar to the property and do not apply to other lands within the neighborhood or the same class of zoning district; and
 - b) the variance is necessary to permit the reasonable use of the property involved; and
 - c) the variance will not be materially detrimental to the public welfare or materially injurious to other property in the area, is in harmony with the general purpose and intent of this ordinance, and will not adversely affect implementation of the Comprehensive Plan; and
 - d) the variance as granted is the minimum necessary to provide reasonable economic use of the property.

The extraordinary conditions or circumstances shall be found not to be the result of an action by the applicant or property owners who have control of the property.

In addition, the approval authority shall find that development of the parcel in question cannot be integrated with development of adjacent parcels under the same ownership in such a manner so as to provide for the reasonable economic use of the total site in a manner consistent with the provisions of this ordinance.

- 2) The Board may grant a variance to the literal provisions of this ordinance if it finds that:
 - a) there has been substantial and detrimental reliance in good faith by an applicant who has received a permit or certificate issued in error by the administrative official charged with enforcement of this ordinance, and
 - b) the mistaken issuance of the certificate or permit is not the result of an action on the part of the applicant, the property owner, or any other person or party who has had control of the property, to provide misleading or incorrect information, or to knowingly withhold information necessary for the administrative official to accurately review the permit or certificate request.
- 3) The Board shall under no circumstances grant a variance that will allow a use otherwise not permitted within the zoning district or any variance of the elevation or levels for flood protection.
- 4) In granting a variance, the zoning administrator or the Board may impose such reasonable and appropriate conditions and safeguards as may be necessary to accomplish, to the extent possible under the circumstances, the purposes of the regulations or provisions which are to be varied or modified and to reduce or minimize potentially injurious effects of the variance upon adjoining properties, the character of the neighborhood, and the health, safety, or general welfare of the community. A variance and any conditions and safeguards which were made a part of the terms under which the variance was granted are binding upon the applicant and any subsequent purchaser, heir, or assign of the property, and any violation of a variance or its conditions and safeguards shall be a violation of this ordinance and punishable as such.